CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 36 **APRIL 3, 2002** **NO. 14**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 141

(T.D. 02–7)

RIN 1515–AD03

ANDEAN TRADE PREFERENCE ACT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Temporary rule; correction.

SUMMARY: On February 15, 2002, a temporary rule was published in the Federal Register as T.D. 02–07 (67 FR 7070–7071). Effective on February 15, 2002, this temporary rule permits importers of eligible articles that, but for the expiration of the ATPA, would have been entitled to duty-free treatment under the ATPA, the option to defer the payment of estimated Customs duties and fees after entry of those articles until May 16, 2002. The purpose of this document is to correct and clarify the wording of two sentences in the preamble of the temporary rule document. The substantive text of the temporary rule is unchanged.

EFFECTIVE DATE: This temporary rule remains effective on February 15, 2002, and expires on May 16, 2002.

FOR FURTHER INFORMATION CONTACT: Leon Hayward, Office of Field Operations, 202–927–3271.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 15, 2002, a temporary rule was published in the Federal Register (67 FR 7070–7071) as T.D. 02–07. Effective on February 15, 2002, this temporary rule permits importers of eligible articles that, but for the expiration of the ATPA, would have been entitled to duty-free treatment under the ATPA, the option to defer the payment of estimated Customs duties and fees after entry of those articles until May 16, 2002. This document corrects and clarifies the wording of two sentences in the preamble of the temporary rule document. The substantive text of the temporary rule is unchanged.

Corrections

The document published in the Federal Register as T.D. 02–7 on February 15, 2002 (67 FR 7070) is corrected as set forth below:

1. Beginning on page 7070, on the bottom of the third column, and continuing on page 7071 in the first column, the last sentence of the first paragraph of the "Summary" is removed and the following two sentences are added in its place to read as follows:

> The Administration anticipates that the duty-free treatment accorded to merchandise under the provisions of the ATPA will be restored and made retroactive to the date of the initial termination of such duty-free treatment (December 4, 2001). There will be no extension of this extraordinary action.

2. On page 7071, in the "Background" portion of the document, in the second column, in the fourth paragraph, the last sentence is corrected to read as follows:

> Accordingly, a one-time interim deferral of estimated duties and fees in anticipation of Congressional re-enactmant of ATPA within the next 90 days is appropriate to further the national security interest in combating narcotic production and trafficking and related criminal and terrorist activities.

Approved: March 15, 2002.

DOUGLAS M. BROWNING,
Acting Assistant Commissioner,
Office of Regulations and Ruling.

[Published in the Federal Register, March 21, 2002 (67 FR 13092)]

19 CFR Part 141

(T.D. 02–12)

RIN 1515–AD07

PAYMENT OF DUTIES ON CERTAIN STEEL PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Temporary rule.

SUMMARY: This is a temporary rule that requires importers of the steel products described in the Presidential Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products published in the Federal Register (67 FR 10553) on March 7, 2002, to defer until April 19, 2002, the deposit of the estimated Customs duties described in the Proclamation on those products entered, or withdrawn from warehouse for consumption in the Customs territory of the United States on or after 12:01 a.m., EST, March 20, 2002 and up to April 4, 2002. This temporary rule implements an instruction of the President regarding the Presidential Proclamation.

EFFECTIVE DATE: This temporary rule is effective at 12:01 a.m. EST, March 20, 2002, and expires on April 20, 2002. This temporary rule applies to those steel products described in Presidential Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products published in the Federal Register (67 FR 10535) on March 7, 2002, that are entered or withdrawn from warehouse for consumption in the Customs territory of the United States on or after 12:01 a.m., EST, March 20, 2002 and up to April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Millie Gleason, Office of Field Operations (202) 927–0625.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 5, 2002, President George W. Bush signed Presidential Proclamation 7529, a proclamation to facilitate positive adjustment to competition from imports of certain steel products. The Proclamation, which was issued under the President's authority under section 203 of the Trade Act of 1974, as amended (19 U.S.C. 2253), established increases in duty and a tariff-rate quota on imports of certain steel products. These safeguard measures were taken by the President to facilitate efforts by the domestic industry to make positive adjustment to import competition and provide greater economic and social benefits than costs. In the Proclamation, the President provides that if he determines within 30 days of the Proclamation that consultations between

the United States and other World Trade Organization (WTO) members pursuant to Article 12.3 of the WTO Agreement on Safeguards have revealed a compelling reason to reduce, modify, or terminate a safeguard measure, he shall proclaim a corresponding reduction, modification, or termination of the safeguard measure.

In conjunction with the Proclamation, President Bush also sent a memorandum dated March 5, 2002, to the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative requiring action under section 203 of the Trade Act of 1974 (19 U.S.C. 2253). In that memorandum, the President instructed the Secretary of the Treasury, pursuant to section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)), to prescribe by regulation a date no later than 45 days after the date of the memorandum at which estimated duties for the steel products described in the Proclamation that are entered or withdrawn from warehouse for consumption on or after 12:01 a.m., EST, March 20, 2002, and up to the 30th day after the signing of the memorandum shall be deposited. The purpose of this deferral of duty is to facilitate consultations between the United States and its foreign trading partners concerning the President's determination in accordance with Article 12.3 of the World Trade Organization Agreement on Safeguards.

The Proclamation and the Memorandum for the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative were published in the Federal Register (67 FR 10553, 67 FR 10593) on March 7, 2002. The effective date of the Proclamation is March 20, 2002.

This document sets forth the temporary regulation that the President instructed the Secretary of the Treasury to prescribe. It is noted that, pursuant to the regulation set forth below, only deposit of the duties required pursuant to Presidential Proclamation 7529 is deferred. The deferral of deposit of duties is not applicable to regular duties, including antidumping and countervailing duties, that are owed on the entry of products covered by the Proclamation.

ADMISTRATIVE PROCEDURE ACT, REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

This regulation implements a direction of the President of the United States pursuant to his authority under section 203 of the Trade Act of 1974, as amended (19 U.S.C. 2253) to take all appropriate and feasible action within his power which he determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. Accordingly, there is good cause that notice and public procedure are contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reason, and because this temporary rule relieves importers from the obligation to deposit estimated duties, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(1) and (3). Moreover, because this temporary rule facilitates consultations between the United States and its foreign trading partners concerning the President's determination in accor-

dance with Article 12.3 of the World Trade Organization Agreement on Safeguards, this rule involves a foreign affairs function of the United States that is exempt from notice and public procedure, as well as a delayed effective date, pursuant to 5 U.S.C. 553(a)(1).

Because no notice of proposed rulemaking is required, this temporary rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Nor is this temporary rule a "significant regulatory action" for purposes of E.O. 12866.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

Amendment to the Regulations

Part 141, Customs Regulations (19 CFR part 141) is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 and the specific authority citation for subpart G continue to read, and a new specific authority for § 141.102(f) is added in appropriate numerical order to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * * * *

Subpart G also issued under 19 U.S.C. 1505;

* * * * * * *

Section 141.102(f) also issued under Presidential Proclamation 7529;

* * * * * * *

2. Section 141.102 is amended by adding a new paragraph (f) to read as follows:

§ 141.102 When deposit of estimated duties, estimated taxes, or both not required.

* * * * * * *

(f) *Steel products described in Presidential Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products.* An importer of the steel products described in Presidential Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products published in the Federal Register (67 FR 10553) on March 7, 2002, must defer until April 19, 2002, the deposit of the estimated Customs duties described in the Proclamation on those products entered, or withdrawn from warehouse for consumption in the Customs territory of

the United States on or after 12:01 a.m., EST, March 20, 2002, and up to April 4, 2002.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: March 18, 2002.

TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 20, 2002 (67 FR 12860)]

U.S. Customs Service

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

RECORD OF VESSEL FOREIGN REPAIR OR EQUIPMENT PURCHASE

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Record of Vessel Foreign Repair or Equipment Purchase. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized

and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Record of Vessel Foreign Repair or Equipment Purchase
OMB Number: 1515–0082
Form Number: Customs form 226
Abstract: This collection is required to ensure the collection of revenue (duty) required on all equipment, parts, or materials purchased, and repairs made to U.S. Flag vessels outside the United States.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 200
Estimated Time Per Respondent: 45 minutes
Estimated Total Annual Burden Hours: 1,500
Estimated Total Annualized Cost on the Public: $30,000

Dated: March 15, 2002.

TRACEY DENNING,
Information Services Group.

[Published in the Federal Register, March 22, 2002 (67 FR 13411)]

PROPOSED COLLECTION; COMMENT REQUEST

DECLARATION FOR UNACCOMPANIED ARTICLES

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration for Unaccompanied Articles. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey

Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration for Unaccompanied Articles

OMB Number: 1515–0087

Form Number: Customs form 255

Abstract: This collection is completed by each arriving passenger for each parcel or container which is being sent from an Insular Possession at a later date. This declaration allows that traveler to claim their appropriate allowable exemption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 7,500

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 1,250

Estimated Total Annualized Cost on the Public: $18,750

Dated: March 15, 2002.

TRACEY DENNING,
Information Services Group.

[Published in the Federal Register, March 22, 2002 (67 FR 13410)]

PROPOSED COLLECTION; COMMENT REQUEST

REPORT OF LOSS, DETENTION, OR ACCIDENT BY BONDED CARRIER, CARTMAN, LIGHTERMAN, FOREIGN TRADE ZONE OPERATOR, OR CENTRALIZED EXAMINATION STATION OPERATOR

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator

OMB Number: 1515–0193
Form Number: N/A
Abstract: This collection is required to ensure that any loss or detention of bonded merchandise, or any accident happening to a vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman, lighterman, qualified bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator are properly reported to the port director.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 250
Estimated Time Per Respondent: 37 minutes
Estimated Total Annual Burden Hours: 154
Estimated Total Annualized Cost on the Public: $9,000

Dated: March 15, 2002.

TRACEY DENNING,
Information Services Group.

[Published in the Federal Register, March 22, 2002 (67 FR 13411)]

PROPOSED COLLECTION; COMMENT REQUEST

NORTH AMERICAN FREE TRADE AGREEMENT DUTY DEFERRAL

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the North American Free Trade Agreement Duty Deferral. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: North American Free Trade Agreement Duty Deferral

OMB Number: 1515–0208

Form Number: N/A

Abstract: The North American Free Trade Agreement Duty Deferral Program prescribe the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program for exportation to another NAFTA country.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 600

Estimated Time Per Respondent: 36 hours

Estimated Total Annual Burden Hours: 400

Estimated Total Annualized Cost on the Public: $10,400

Dated: March 15, 2002.

TRACEY DENNING,
Information Services Group.

[Published in the Federal Register, March 22, 2002 (67 FR 13412)]

PROPOSED COLLECTION; COMMENT REQUEST

NOTICE OF DETENTION

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Notice of Detention. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Notice of Detention

OMB Number: 1515–0210

Form Number: N/A

Abstract: This collection requires a response to the Notice of Detention of merchandise and to provide evidence of admissibility to allow entry.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 250
Estimated Time Per Respondent: 2 hours
Estimated Total Annual Burden Hours: 500
Estimated Total Annualized Cost on the Public: $12,500

Dated: March 15, 2002.

TRACEY DENNING,
Information Services Group.

[Published in the Federal Register, March 22, 2002 (67 FR 13412)]

PROPOSED COLLECTION; COMMENT REQUEST

LAY ORDER PERIOD—GENERAL ORDER MERCHANDISE

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Lay Order Period—General Order Merchandise. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of

the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lay Order Period—General Order Merchandise Cost Submissions

OMB Number: 1515–0220

Form Number: N/A

Abstract: This collection is required to ensure that the operator of an arriving carrier, or transfer agent shall notify a bonded warehouse proprietor of the presence of merchandise that has remained at the place of arrival or unlading without entry beyond the time period provided for by regulation.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 300

Estimated Time Per Respondent: 15 hours

Estimated Total Annual Burden Hours: 7,500

Estimated Total Annualized Cost on the Public: $103,125

Dated: March 15, 2002.

TRACEY DENNING,
Information Services Group.

[Published in the Federal Register, March 22, 2002 (67 FR 13413)]

LIST OF FOREIGN ENTITIES VIOLATING TEXTILE TRANSSHIPMENT AND COUNTRY OF ORIGIN RULES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

DATES: This document notifies the public of the semiannual list for the 6-month period starting March 31, 2002, and ending September 30, 2002.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Gregory Olsavsky, Fines, Penalties and Forfeitures Branch, Office of Field Operations, (202) 927–3119. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202)927–6900.

SUPPLEMENTARY INFORMATION

BACKGROUND

Section 333 of the Uruguay Round Agreements Act (URAA) (Public Law 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the Federal Register, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the eva-

sion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.2 and 171.61, Customs Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

1) Has the importer had a prior relationship with the named party?

2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

7) What is the history of this country regarding this commodity?

8) Have you asked questions of your supplier regarding the origin of the product?

9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On October 10, 2001, Customs published a Notice in the Federal Register (66 FR 51734) which identified 13 (thirteen) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending March 30, 2002, Customs has identified 10 (ten) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects no new entities and three removals to the 13 entities named on the list published on October 10, 2001. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 10 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 10 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the Federal Register):

Austin Pang Gloves & Garments Factory, Ltd., Jade Heights, 52 Tai Chung Kiu Road, Flat G, 19/F, Shatin, New Territories, Hong Kong. (10/99)

Beautiful Flower Glove Manufactory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 10–16, 4/F, Yuen Long, New Territories, Hong Kong. (10/99)

BF Manufacturing Company, Kar Wah Industrial Building, Leung Yip Street, Flat 13, 4/F, Yeun Long, New Territories, Hong Kong. (10/99)

Ease Keep, Ltd., 750 Nathan Road, Room 115, Kowloon, Hong Kong. (10/99)

Everlite Manufacturing Company, P.O. Box 90936, Tsimshatsui, Kowloon, Hong Kong (3/01).

Fabrica de Artigos de Vestuario E-Full, Lda. Rua Um doi Bairro da Concordia, Deificio Industrial Vang Tai, 8th Floor, A-D, Macau. (10/99)

Fabrica de Artigos de Vestuario Fan Wek Limitada, Av. Venceslau de Morais, S/N 14 B-C, Centro Ind. Keck Seng (Torre 1), Macau. (10/99)

Fairfield Line (HK) Co. Ltd., 60–66 Wing Tai Commer., Bldg. 1/F, Sheung Wan, Hong Kong (3/01).

G.P. Wedding Service Centre, Lee Hing Industrial Building, 10 Cheung Yue Street 11th Floor, Cheung Sha Wan, Kowloon, Hong Kong. (10/00)

Lucky Mind Industrial Limited, Lincoln Centre, 20 Yip Fung Street, Flat 11, 5/F, Fan Ling, New Territories, Hong Kong. (10/99)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Additional Foreign Entities

In the October 10, 2001, Federal Register notice, Customs also solicited information regarding the whereabouts of 5 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 5 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

In this document, a new list is being published which contains the names and last known addresses of 3 entities. This reflects the removal of two entities from the list of 5 entities published on October 10, 2001.

Customs is soliciting information regarding the whereabouts of the following 3 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the Federal Register):

Au Mi Wedding Dresses Company, Dragon Industry Building, 98, King Law Street, Unit F, 9/F, Lai Chi Kok, Kowloon, Hong Kong. (10/99)

Golden Wheel Garment Factory, Flat A, 10/F, Tontex Industrial Building, 2–4 Sheung Hei Street, San Po Kong, Kowloon, Hong Kong. (10/99)

Lai Cheong Gloves Factory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 101, 1–F, Yuen Long, New Territories, Hong Kong. (3/00)

If you have any information as to a correct mailing address for any of the above 3 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dated: March 14, 2002.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, March 20, 2002 (67 FR 13042)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, March 20, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
(for Douglas M. Browning, Acting Assistant Commissioner,
Office of Regulations and Rulings.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF RUBBER COATED STEEL SHEET

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of rubber coated steel sheet.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the tariff classification of rubber coated steel sheet, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on February 13, 2002, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 3, 2002.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sec-

tions of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility.** These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on February 13, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 7, proposing to revoke *NY* E87780, dated October 26, 1999, which classified rubber coated steel sheet as flat-rolled products of iron or nonalloy steel and as flat-rolled products of stainless steel, in provisions of headings 7210, 7212, 7219 and 7220, Harmonized Tariff Schedule of the United States (HTSUS), as appropriate. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking *NY* E87780 to reflect the proper classification of the merchandise in subheading 7326.90.85, HTSUS, as other articles of iron or steel, pursuant to the

analysis in *HQ* 964872, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 19, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, March 19, 2002.

CLA–2 RR:CR:GC 964872 JAS
Category: Classification
Tariff No. 7326.90.85

MR. CRAIG M. SCHAU
EMERY CUSTOMS BROKERS
6940A Engle Road
Middleburg Heights, OH 44130

Re: *NY* E87780 Revoked; Rubber Coated Steel Sheet.

DEAR MR. SCHAU:

In *NY* E87780, which the Director of Customs National Commodity Specialist Division, New York, issued to you on October 26, 1999, on behalf of Freudenberg NOK, carbon steel sheet and stainless steel sheet, coated on both sides with rubber, were held to be classifiable as flat-rolled products in provisions of headings 7210, 7212, 7219 and 7220, Harmonized Tariff Schedule of the United States (HTSUS), respectively.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* E87780 was published on February 13, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 7. No comments were received in response to that notice.

Facts:

The merchandise in *NY* E87780, described as NOK Softmetal, is rubber coated carbon steel sheet and rubber coated stainless steel sheet. The steel substrate is first coated on both sides with a liquid adhesive, which is allowed to dry. This surface is then coated to the desired thickness with liquid rubber, and heat applied to vulcanize the liquid rubber into a solid. The rubber surface is then coated with either graphite or plastic resin to avoid sticking and to minimize sliding friction. The merchandise is imported in various widths and, after importation, is used in automotive applications for the manufacture of brake shims and head gaskets for internal combustion engines.

The HTSUS provisions under consideration are as follows:

4016	Other articles of vulcanized rubber other than hard rubber
* * * * * * *	
7210	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, clad, plated or coated

*	*	*	*	*	*	*	
7212	Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, clad, plated or coated						
*	*	*	*	*	*	*	
7219	Flat-rolled products of stainless steel, of a width of 600 mm or more						
*	*	*	*	*	*	*	
7220	Flat-rolled products of stainless steel, of a width of less than 600 mm						
*	*	*	*	*	*	*	
7326	Other articles of iron or steel:						
7326.90	Other						
7326.90.85	Other						

Issue:

Whether steel sheet coated with rubber, as described, remains a flat-rolled product for tariff purposes.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 3(b) states in part that composite goods are to be classified as if consisting of that material or component which imparts the essential character to the whole. GRI 3(c) states that goods which cannot be classified according to GRI 3(b) are to be classified in the heading which occurs last in numerical order from among those which equally merit consideration.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The General Explanatory Notes to chapter 72, HTSUS, state on p. 1070 that finished products of that chapter may be subjected to further finishing treatments or converted into other articles by surface treatments or other operations *to improve the properties or appearance of the metal, protect it against rusting or corrosion, etc.* (Emphasis added). Except as provided in the text of certain headings, such treatments do not affect the heading in which the goods are classified. On p. 1071, the Notes state that such authorized surface treatments include coating with non-metallic substances, e.g., enamelling, varnishing, lacquering, painting, surface printing, coating with ceramics or plastics.

The decision in *NY* E87780 was based on the conclusion that coating steel sheet with rubber on both sides, and further coating the product with graphite or plastic resin, was designed to improve the properties or appearance of the metal, protect it against rusting, corrosion, etc. This constituted a permissible surface treatment that allowed the goods to remain in the respective headings of chapter 72. This is incorrect and no longer represents Customs position in the circumstances.

In *HQ* 964609, dated July 30, 2001, substantially similar merchandise was found to be classifiable as an article of iron or steel of heading 7326, HTSUS. That decision provides an analysis we deem instructive in the present situation. *HQ* 964609 cited with approval *HQ* 083126, dated February 13, 1990, which held that the coating of stainless steel sheet with nitrile butadiene vulcanized rubber does *not* constitute a permissible "further working" of the steel intended to improve the properties or appearance of the metal, to protect it against rusting, corrosion, etc. *HQ* 083126 found the merchandise to be a composite good consisting of different materials or components that requires classification under GRI 3, HTSUS. The rubber-coated steel sheet in that ruling was described as being specially designed and manufactured for the production of gaskets used in internal combustion engines. Its use elsewhere was said to be economically prohibitive. One of the most important features of the article is that its surface is soft so that the gasket can obtain a good seal. Stainless steel alone cannot be used as a gasket because it is too hard to conform to the surface of a flange and to form the required seal. Coating the steel with a thin layer of rubber results in an ideal article for the production of gaskets, one having the strength of steel and the softness of rubber. The statement in *HQ* 083126, "[e]ven if coating with rubber

were to be considered a surface treatment such as coating with plastics, in this case it would not be for improving the properties or appearance of the metal, protecting it, or the like" is particularly relevant here.

The rubber coated steel sheet is a composite good made up of different constituents, each provided for in its own heading. Each heading, however, describes part only of the good. It is clear that the rubber coating in this case is not designed to enhance the metal; rather, it is a functional constituent designed to effect a good seal. Thus, the rubber component, described by heading 4016, advances the stainless steel sheet beyond a flat rolled product described in headings 7210, 7212, 7219 and 7220. Further, the analysis in *HQ* 083126 concerning the rigidity of the steel and its ability to be cut into various shapes, is equally compelling. For these reasons, we are unable to establish the essential character of the NOK Softmetal under GRI 3(b). Therefore, we find that under GRI 3(c) the carbon steel and stainless steel sheet coated with a nitrite synthetic rubber compound and either graphite or plastic resin is to be classified in heading 7326, as the heading that occurs last in numerical order among the enumerated headings, all of which merited consideration. The graphite and plastic resin were not given consideration, as they were not functional constituents of the product, their presence serving merely to avoid sticking and to minimize sliding friction.

Holding:

Under the authority of GRI 3(c), rubber coated carbon steel and stainless steel sheet, designated NOK Softmetal, is provided for in heading 7326. It is classifiable in subheading 7326.90.85, HTSUS.

Effect on Other Rulings:

NY E87780, dated October 26, 1999, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A THERMAL GRAVY SERVER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of a thermal gravy server.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a thermal gravy server and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published on February 13, 2002, in Vol. 36, No. 7, of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 927–2391.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on February 13, 2002, in Vol. 36, No. 7, of the CUSTOMS BULLETIN, proposing to modify NY D84883 dated December 18, 1998, concerning the tariff classification of a thermal gravy server. No comments were received in response to this notice.

As stated in the proposed notice, this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to have advised the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise

issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY D84883 dated December 18, 1998, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964889. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964889, modifying NY D84883, and revoking its treatment relating to tariff classification, is set forth as the "Attachment" to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 18, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 18, 2002.

CLA–2 RR:CR:GC 964889 KBR
Category: Classification
Tariff No. 9617.00.10

MR. ED JORDAN
EXPEDITORS INTERNATIONAL
5200 West Century Boulevard, 6th Floor
Los Angeles, CA 90045

Re: Reconsideration of NY D84883; Thermal gravy server.

DEAR MR. JORDAN:

This is in reference to your letter of August 30, 2000, to the Customs National Commodity Specialist Division, requesting reconsideration of New York Ruling Letter (NY) D84883, issued to you by that office on December 18, 1998, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a thermal gravy server and a 27 piece kitchen organizer. This ruling concerns only the thermal gravy server. We have reviewed the prior ruling and have determined that the classification provided for the thermal gravy server is incorrect.

Pursuant to sections 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on February 13, 2002, in Vol. 36, No. 7 of the CUSTOMS BULLETIN, proposing to modify NY D84883. No comments were received in response to that notice. This ruling modifies NY D84883 by providing the correct classification for the thermal gravy server.

Facts:

The product is a thermal, 2-cup capacity gravy server, part # 1723. The thermal gravy server has a plastic exterior and a plastic screw top cover. The base of the thermal server is

lined on the inside with a thin sheet of glass to provide insulation. The thermal server has a vacuum, double-walled glass inner liner. NY D84883 classified the article in subheading 3924.10.50, HTSUS, which provides for tableware, kitchenware, other household articles, of plastics: other.

In your submission dated April 29, 1999, you stated that the thermal gravy server was not described fully in the original ruling request dated November 10, 1998. You stated that the description of the article should have included that the article had a vacuum, double-walled glass inner liner. Examination of the sample of the article you submitted revealed that the article was a vacuum vessel. We have reviewed NY D84883 and determined that the classification of the thermal gravy server is incorrect. This ruling sets forth the correct classification.

Issue:

What is the correct classification of the thermal gravy server?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
3924.10	Tableware and kitchenware:
3924.10.50	Other
9617.00	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners:
	Vessels:
9617.00.10	Having a capacity not exceeding 1 liter

The EN for 96.17 states that the heading covers:

> Vacuum flasks and other similar vacuum vessels, provided they are complete with the cases. This group includes vacuum jars, jugs carafes, etc., designed to keep liquids, food or other products at fairly constant temperature, for reasonable periods of time. These articles consist of a double-walled receptacle (the inner), generally of glass, with a vacuum created between the walls, and a protective outer casing of metal, plastics or other material, sometimes covered with paper, leather, leathercloth, etc. The space between the vacuum container and the outer casing may be packed with insulating material (glass fibre, cork, or felt). In the case of vacuum flasks the lid can often be used as a cup.

Customs based its determination in NY D84883, on the information originally provided. Customs was not provided with information concerning the vacuum, double-walled glass inner liner of the article. After Customs received the additional information and the sample, the Customs laboratory confirmed that the article had a vacuum, double-walled glass inner liner.

Customs found in NY A86506 dated October 8, 1996, that a thermal carafe with an vacuum, double-walled inner glass liner was properly classified in subheading 9617.00.10, HTSUS. We find the article in the instant case to be similar to that in NY A86506. Therefore, in consideration of the additional information and pursuant to EN 96.17, Customs finds that the correct classification for the thermal gravy server is in subheading 9617.00.10, HTSUS, as vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners: having a capacity not exceeding 1 liter.

Holding:

In accordance with the above discussion, the thermal gravy server is classified in subheading 9617.00.10, HTSUS, as vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners: having a capacity not exceeding 1 liter.

NY D84883 dated December 18, 1998, is **modified** with respect to the thermal gravy server (part number 1723), as set forth herein. The classification of the kitchen organizer is not affected by this ruling. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A SNO-CONE MAKER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letters and treatment relating to tariff classification of a sno-cone maker.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke two ruling letters pertaining to the tariff classification of a sno-cone maker under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before May 3, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch, (202) 927–1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts

are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke two ruling letters pertaining to the tariff classification of a sno-cone maker. Although in this notice Customs is specifically referring to New York Ruling Letters (NY) 843670, dated August 1, 1989, and NY D85633, dated December 11, 1998, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY 843670, dated August 1, 1989, set forth as Attachment A to this document, and in NY D85633, dated December 11, 1998, set forth as Attachment B to this document, Customs classified a sno-cone maker under subheading 8210.00.00, HTSUS, which provides for: hand-operated mechanical appliances, weighing 10 kg. or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof.

Since the issuance of these rulings, Customs has reexamined the competing tariff provisions and has determined that the original classification is in error. The products are food preparation articles limited in use, marketed and sold as toys, and providing manipulative play and role-play for young children. As such, they are classified in subheading 9503.90.0045, HTSUS, as other toys. Although both provisions describe the goods, Note 1(l) to Section XV, HTSUS, which includes chapter 82, excludes from the section articles that are classifiable in chapter 95.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY 843670, NY D85633 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965507 and HQ 965508, set forth as Attachments C and D of this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 18, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY.

CLA–2–82:S:N:N1:113 843670
Category: Classification
Tariff No. 8210.00.0000

MR. NED MARSHAK
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
67 Broad Street
New York, NY 10004

Re: The tariff classification of an "Ice Busters sno-cone" machine set from China.

DEAR MR. MARSHAK:

In your letter dated July 20, 1989 you requested a classification ruling on behalf of KMart Corp.

The sample "Ice Busters", Code No. 04–25–36, consists of a "sno-cone" machine with metal ice shaver, 1 package of soft drink mix, 2 disposable cups, a plastic ice scoop, and instructions to make "sno-cone" at home with any soft drink mix.

The applicable subheading for the "Ice Busters" set will be 8210.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for hand-operated mechanical appliances, weighing 10 kg. or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof. The rate of duty will be 5.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 11, 1998.

CLA–2–82:RR:NC:MM:113 D85633
Category: Classification
Tariff No. 8210.00.0000(EN)

MR. JUAN DOMINGUEZ
WAL-MART STORES, INC.
702 Southwest 8th Street
Bentonville, AR 72716–8023

Re: The tariff classification of a sno-cone maker from China.

DEAR MR. DOMINGUEZ:

In your letter dated December 3, 1998, you requested a tariff classification ruling.

The merchandise is the Snowman Sno-Cone Maker (item number 7119). The product will be used by children to make flavored shaved ice. The top of the sno-cone maker is a plastic snowman that also serves as a tool to press against the ice. Removing the snowman reveals an open plastic ice chute. At the bottom of the chute are four small metal blades mounted on a plastic disc. Turning a plastic handle rotates the blades and shaves the ice. The ice shavings then fall into an attached plastic container. Included with the Sno-Cone Maker are 2 plastic cups, 2 plastic spoons, and 1 plastic syrup applicator in the shape of a snowman.

The applicable subheading for the Snowman Sno-Cone Maker will be 8210.00.0000(EN), Harmonized Tariff Schedule of the United States (HTS), which provides for hand-operated mechanical appliances, weighing 10 kg. or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof. The rate of duty will be 4 percent ad valorem. Effective January 1, 1999, the rate of duty will be 3.7 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 212–466–2084.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965507JGB
Category: Classification
Tariff No. 9503.90.00

MR. NED MARSHAK
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
67 Broad Street
New York, NY 10004

Re: NY 843670 revoked; "Ice Busters sno-cone" maker.

DEAR MR. MARSHAK:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) 843670, issued to you August 1, 1989, on behalf of K-Mart, concerning the classification of a sno-cone machine under the Harmonized Tariff Schedule of the United States (HTSUS). After a review of that ruling, it has been determined that the classification of the sno-cone machine in heading 8210, HTSUS, was incorrect. For the reasons that follow, this ruling revokes NY 843670.

Facts:

The merchandise is identified as "Ice Busters", Code No. 04–25–36, described as a machine with metal ice shaver, 1 package of soft drink mix, 2 disposable cups, a plastic ice scoop, and instructions to make "sno-cone" at home with any soft drink mix.

Issue:

Whether the "Ice Busters" sno-cone machine is classified in heading 8210, HTSUS, which provides for hand-operated mechanical appliances, weighing 10 kg. or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof, or in subheading 9503.90.00, HTSUS, other toys.

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the HTSUS, the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, may be used. The ENs, although not dispositive or legally binding, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The HTSUS provisions under consideration for the classification of the sno-cone machine are as follows:

8210:	Hand-operated mechanical appliances, weighing 10 kg. or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof
9503:	Other toys; reduced-size "scale" models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

This article is described by both headings. GRI 3 provides, in pertinent part, "When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description." However, under the terms of GRI 1, "any relative section or chapter notes" must be considered before applying the GRI's beyond GRI 1. Heading 8210, HTSUS, falls into Section XV. Note 1(l) to Section XV excludes "Articles of Chapter 95 (for example, toys, games, sports equipment)." Therefore, if the product meets the standards of heading 9503, HTSUS, it cannot be classified in heading 8210, HTSUS.

Although Customs does not have any description of the product beyond the initial ruling, the product appears to be of the kind that are limited use, food preparation articles, marketed and sold as toys, and providing manipulative play and role-play for young children. The inclusion of the soft drink mix, 2 disposable cups, and the plastic ice scoop, suggest both the limited use and the low-volume production of the article, typical for amusement activities for young children. In short, this product could not be confused with a "real" sno-cone maker that would typically have an electric motor and be designed to produce scores of sno-cones in a day. The ENs to heading 9503 state that "certain toys (e.g., electric irons, sewing machines, musical instruments, etc.) may be capable of a limited 'use,'; but they are generally distinguishable by their size and limited capacity from real sewing machines, etc." Because of the limited use, and the other factors indicated, *supra*, the article is classifiable in subheading 9503.90, HTSUS, as an other toy.

Because classification in chapter 82 is precluded by Note 1(l) to Section XV, it is not pertinent to discuss classification of this article in heading 8210.

This decision is in accord with Headquarters Ruling Letter (HQ) 961906, dated July 2, 1999, which classifies a similar product, the Snoopy Snow Cone Machine in subheading 9503.90, HTSUS.

Holding:

The "Ice Busters sno-cone maker is classifiable under subheading 9503.90, HTSUS, as an other toy.

NY 843670 is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965508JGB
Category: Classification
Tariff No. 9503.90.00

MR. LARRY ORDET
SANDLER, TRAVIS, AND ROSENBERG, P.A.
5200 Blue Lagoon Drive, Suite 600
Miami, FL 33126

Re: NY D84633 revoked; "Mr. Snowman Sno-Cone" maker.

DEAR MR. ORDET:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) D84633, issued to Mr. Juan Dominguez, on December 11, 1998, on behalf of Wal-Mart Stores, Inc., concerning the classification of a sno-cone machine under the Harmonized Tariff Schedule of the United States (HTSUS). After a review of that ruling, it has been determined that the classification of the sno-cone machine in heading 8210, HTSUS, was incorrect. For the reasons that follow, this ruling revokes NY D84633.

Facts:

The merchandise is identified as "Mr. Snowman Sno-Cone" maker, item #7119, described as a machine used by children to make flavored shaved ice. The tope of the sno-cone maker is a plastic snowman that also serves as a tool to press the ice cubes against the ice to be shaved. Removing the snowman reveals an open plastic chute. At the bottom of the chute are four small metal blades mounted on a plastic disk. Turning a plastic handle rotates the blades and shaves the ice. The ice shavings then fall into an attached plastic container. Included with the Sno-Cone Maker are 2 disposable cups, 2 plastic spoons, 1 package of soft drink mix, and 1 plastic syrup applicator in the shape of a snowman.

Issue:

Whether the "Mr. Snowman Sno-Cone" maker is classified in heading 8210, HTSUS, which provides for hand-operated mechanical appliances, weighing 10 kg. or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof, or in subheading 9503.90.00, HTSUS, other toys.

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the HTSUS, the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, may be used. The ENs, although not dispositive or legally binding, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The HTSUS provisions under consideration for the classification of the sno-cone maker are as follows:

8210:	Hand-operated mechanical appliances, weighing 10 kg. or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof
9503:	Other toys; reduced-size "scale" models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

This article is described by both headings. GRI 3 provides, in pertinent part, "When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description." However, under the terms of GRI 1, "any relative section or chapter notes" must be considered before applying the GRI's beyond GRI 1. Heading 8210, HTSUS, falls into Section XV. Note 1(l) to Section XV excludes "Articles of Chapter 95 (for example, toys, games, sports equipment)." Therefore, if the product meets the standards of heading 9503, HTSUS, it cannot be classified in heading 8210, HTSUS.

An examination of the sample, provided in connection with another matter before Customs, demonstrates that the product appears to be of the kind that are limited use, food preparation articles, marketed and sold as toys, and providing manipulative play and role-play for young children. The articles included with the set, such as 2 disposable cups, and the plastic spoons, suggest both the limited use and the low-volume sno-cone production of the article, typical for amusement activities for young children. In short, this product could not be confused with a "real" sno-cone maker that would typically have an electric motor and be designed to produce scores of sno-cones in a day. The ENs to heading 9503 state that "certain toys (e.g., electric irons, sewing machines, musical instruments, etc.) may be capable of a limited 'use,'; but they are generally distinguishable by their size and limited capacity from real sewing machines, etc." Because of the limited use, and the other factors indicated, *supra*, the article is classifiable in subheading 9503.90, HTSUS, as an other toy.

Because classification in chapter 82 is precluded by Note 1(l) to Section XV, it is not pertinent to discuss classification of this article in heading 8210.

This decision is in accord with Headquarters Ruling Letter (HQ) 961906, dated July 2, 1999, which classifies a similar product, the Snoopy Snow Cone Machine in subheading 9503.90, HTSUS.

Holding:

The "Mr. Snowman Sno-Cone" maker is classifiable under subheading 9503.90, HTSUS, as an other toy.

NY D85633 is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

WITHDRAWAL OF PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO CLASSIFICATION OF MILK PROTEIN CONCENTRATE MIXTURES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed revocation of ruling letters and revocation of treatment relating to the classification of milk protein concentrate mixtures.

SUMMARY: This notice advises interested parties that Customs is withdrawing its proposal to revoke three ruling letters pertaining to the tariff classification of milk protein concentrate mixtures and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocations was published in the CUSTOMS BULLETIN of October 3, 2001, Vol. 35, No. 40, pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057).

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: John Durant, Director, Commercial Rulings Division, 202–927–1964.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on October 3, 2001, in the CUSTOMS BULLETIN, Vol. 35, No. 40, proposing to revoke New York Ruling Letters, NY 816940, dated December 6, 1995, NY B80989, dated January 16, 1997, and NY D83787, dated November 13, 1998 , pertaining to the tariff classification of products referred to as milk protein concentrate mixtures under subheading 0404.90.10 of the Harmonized Tariff Schedule of the United States (HTSUS). After having analyzed the comments received on the proposed revocation and reviewed the relevant tariff provisions, Customs has determined not to proceed with the revocation.

Therefore, this notice advises interested parties that Customs is withdrawing its proposed revocation of the rulings set forth above.

NY 816940, NY B80989 and NY D83787 will remain in full force and effect.

Dated: March 15, 2002.

JOHN DURANT,
Director,
Commercial Rulings Division.

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 24 and 111

RIN 1515–AC81

USER FEES

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to reflect various legislative amendments to 19 U.S.C. 58c, the Customs user fee statute, including those made by the Miscellaneous Trade and Technical Corrections Act of 1999 and the Tariff Suspension and Trade Act of 2000. The proposed regulations set forth the new fee structure for passengers arriving in the United States aboard commercial vessels and aircraft, provide for application of a fee to ferries in limited circumstances, and clarify how Customs administers certain user fees. Also, minor conforming changes are proposed to the regulations pertaining to customs brokers.

DATES: Written comments must be received on or before May 17, 2002.

ADDRESS: Written comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Concerning user fees applicable to commercial vessel and aircraft passengers under § 24.22(g): Edward Matthews at (202) 927–0552.

Concerning the various fee payment and information submission procedures under § 24.22: Robert T. Reiley at (202) 927–1504.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document proposes changes concerning user fees to Parts 24 and 111 of the Customs Regulations (19 CFR Parts 24 and 111). The changes to Part 24 involve § 24.22 and have several bases: (1) some changes de-

rive from provisions of the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36, 113 Stat. 127), signed into law on June 25, 1999; (2) one change is based on a provision of the Tariff Suspension and Trade Act of 2000 (Pub. L. 106–476, 114 Stat. 2101), signed into law on November 9, 2000; (3) some changes are based on other statutory provisions that have not previously been reflected in the regulations; (4) some changes are proposed to bring the regulations up to date with current administrative practices; (5) and one change is a technical correction. The changes to Part 111 are intended to clarify administration of the annual user fee and the permit fees for customs brokers.

Proposed Changes Based on the Miscellaneous Trade and Technical Corrections Act of 1999

Section 2418 of the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act) amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, codified at 19 U.S.C. 58c (section 58c), which established user fees for certain services performed by the Customs Service. These amendments to section 58c necessitate conforming amendments to the Customs Regulations.

On July 27, 1999, Customs issued a general notice in the Federal Register (64 FR 40648) that announced the statutory changes made by the Act and pointed out that these self-effectuating changes became effective on July 25, 1999. The notice also announced several other related changes affecting Customs administration of user fees. The notice indicated that appropriate amendments to the Customs Regulations would be published in due course. This document, issued as a notice of proposed rulemaking because the proposed changes include some that are not derived from self-effectuating statutory amendments, invites public comment on the proposed changes.

Prior Law

Under section 58c(a), Customs is authorized to collect specific fees charged for certain Customs inspectional services, including, in section 58c(a)(5), fees for passengers arriving in the United States aboard commercial vessels and aircraft. Under section 58c(d), the fees are collected from passengers by the companies that issue the ticket or travel document for transportation into the customs territory of the United States or that provide the actual transportation, and those companies remit the fees to Customs.

Immediately prior to enactment of the Act, section 58c(a)(5)(A) provided for a fee of $6.50 per passenger arriving in the United States aboard a commercial vessel or commercial aircraft from a place outside the customs territory of the United States. However, this fee provision applied only to fiscal years 1994 (effective on January 1, 1994) through 1997. Thus, after fiscal year 1997, the $6.50 fee was no longer in effect.

Immediately prior to enactment of the Act, section 58c(a)(5)(B), applicable to fiscal year 1998 and each following fiscal year, provided for a fee of $5 per passenger arriving in the United States aboard a commercial vessel or commercial aircraft from a place outside the United States

other than a place referred to in section 58c(b)(1)(A)(i), that is, Canada, Mexico, a territory or a possession of the United States, or any adjacent island. (Section 24.22(g)(2)(i)(B) of the Customs Regulations (19 CFR 24.22(g)(2)(i)(B)) currently provides that the territories and possessions of the United States include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands and that adjacent islands include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miquelon, and the Turks and Caicos Islands. However, this document includes discussion of a proposal to amend the provision concerning this list of adjacent islands.)

The effect of these provisions was to impose a fee structure as follows: (1) a fee of $6.50 on commercial vessel and aircraft passengers arriving from locations outside the customs territory of the United States through September 30, 1997, then, (2) commencing on October 1, 1997, a fee of $5 per commercial vessel and aircraft passenger arriving from a place outside the United States except for a passenger arriving from Canada, Mexico, a U.S. territory or possession, or an adjacent island. Thus, beginning with fiscal year 1998, there was no fee applicable under section 58c(a)(5) for commercial vessel or aircraft passengers arriving from Canada, Mexico, United States territories or possessions, or adjacent islands. (For Puerto Rico, this represented no change because Puerto Rico is part of the customs territory of the United States and thus no fee applied to Puerto Rico under section 58c(a)(5)(A).)

In addition, immediately prior to enactment of the Act, section 58c(b)(1)(A) provided that no fee may be charged under section 58c(a) in the case of the arrival of a passenger whose journey either originated in Canada, Mexico, a United States territory or possession, or an adjacent island or originated in the United States and was limited to Canada, Mexico, a United States territory or possession, or an adjacent island. (This prohibition was suspended during the period from January 1, 1994, through September 30, 1997 (under section 58c(b)(1)(C)).)

New Fee Structure

Paragraph (b)(1) of section 2418 of the Act amended sections 58c(a)(5)(A) and (B) to modify the above-discussed fee structure. The amendment accomplished two things: (1) it continued, in section 58c(a)(5)(A), the $5 fee per passenger arriving in the United States aboard a commercial vessel or aircraft from a place outside the United States other than Canada, Mexico, a United States territory or possession, or an adjacent island; and (2) it imposed, under section 58c(a)(5)(B), a fee of $1.75 per passenger arriving aboard a commercial vessel (not commercial aircraft) from Canada, Mexico, a United States territory or possession, or an adjacent island. Thus, under the amended statute, no fee applies in the case of passengers arriving aboard commercial aircraft from Canada, Mexico, a United States territory or possession, or an adjacent island.

Customs notes that the amendment of section 58c(b)(1)(A) enables collection of the $1.75 per passenger fee of amended section

58c(a)(5)(B). The amendment excepted that fee from the fee exemption provided by section 58c(b)(1)(A) that otherwise precludes application of a fee under section 58c(a)(5) in connection with the arrival of any passenger whose journey originated in Canada, Mexico, a United States territory or possession, or an adjacent island or which originated in the United States and was limited to those named places.

Customs proposes in this document to amend the Customs Regulations to conform to the new fee structure.

Procedures for Payment of the New Fees

Prior to the Act, only one fee applied to covered passengers under section 58c(a)(5), that is, $5 prior to January 1, 1994, $6.50 beginning on January 1, 1994, and $5 beginning on October 1, 1997. With the Act's amendment of section 58c(a)(5), there are now two passenger fees, that is, the $5.00 fee of section 58c(a)(5)(A) where applicable and the $1.75 fee of section 58c(a)(5)(B) where applicable. Thus, since enactment of the Act, Customs must administer and account for two fees rather than one. This new fee structure requires amendment of the Customs Regulations to conform the regulatory procedures to the new fee structure.

Under the current Customs Regulations, it is the responsibility of the carriers, travel agents, tour wholesalers, or other parties issuing tickets or travel documents to collect the fee from all passengers who are subject to the fee (19 CFR 24.22(g)(3)). These parties must make payment of the collected fees to Customs no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passengers (19 CFR 24.22(g)(4)). The regulation also provides (in § 24.22(g)(4)) that the quarterly fee payment must be accompanied by a statement that includes the name, address, and taxpayer identification number of the party remitting the payment and the calendar quarter covered by the payment.

This document proposes to amend §24.22(g)(3) (redesignated in the proposed regulation as § 24.22(g)(4)) to make clear that the party responsible for collecting the fee must collect a fee when an infant travels without a ticket or travel document. This follows Customs consistent practice of treating infants as passengers for purposes of the passenger fees. In this regard, Customs proposes to clarify this by adding to § 24.22(g)(1) a definition of the term "passenger" making it clear that it includes infants even if the carrier does not charge for their transportation and even if the infant is carried by another passenger rather than occupying a seat.

The document also proposes to amend § 24.22(g)(4) (redesignated as § 24.22(g)(5)) to require the following additional information in the statement: the total number of tickets for which fees were required to be collected, including the total number of infants traveling without a ticket or travel document for which fees were required to be collected; the total amount of fees collected and remitted; with respect to vessel fees, the total number of tickets and non-ticketed infants for which fees were required to be collected and the total amount of fees collected; and a

breakdown of vessel fees collected and remitted under section 58c(a)(5)(A) (the $5 per passenger fee) and section 58c(a)(5)(B) (the $1.75 per passenger fee). This additional information is necessary to enable Customs to properly account for the fees now provided for under section 58c(a)(5).

The Tariff Suspension and Trade Act of 2000

A recent amendment to section 58c was made by section 1457 of the Tariff Suspension and Trade Act of 2000. Under section 1457, section 58c(b)(1)(A)(iii) was amended to provide an exception to the fee limitation relative to ferries. Prior to this amendment, ferries were excepted from application of the fees under section 58c(a). With this self-effectuating amendment (effective on November 24, 2000), ferries whose operations began on or after August 1, 1999, and who operate south of 27 degrees latitude and east of 89 degrees longitude are now subject to the commercial vessel fee of section 58c(a)(1) (19 CFR 24.22(b)(1)) (provided the ferry is of 100 net tons or more) and the $1.75 commercial vessel passenger fee of section 58c(a)(5)(B) (proposed paragraph (g)(1)(ii) of 19 CFR 24.22). (Customs notes that the definition of "ferry" excludes vessels that provide transportation between places that are more than 300 miles apart. This requirement necessarily means that the $1.75 commercial vessel passenger fee would be applicable because a ferry operating within the specified coordinates will arrive in the United States from a place that qualifies as an adjacent island under paragraph (g)(1)(iii) of this section. See the definition of "ferry" in 19 U.S.C. 58c(c)(1) and 19 CFR 24.22(a)(4).) This amendment necessitates conforming amendments to §§ 24.22(b)(4)(iv) and 24.22(g)(1) of the Customs Regulations.

Proposed Changes Based on Other Statutory Provisions

This document also proposes to include provisions in § 24.22(g) to cover the fee exemption provision set forth in section 58c(b)(1)(A)(iv) and the "one-time only fee" set forth in section 58c(b)(4)(B). These two statutory provisions are not reflected in the current regulation.

The fee exemption provision under section 58c(b)(1)(A)(iv) provides that no fee under section 58c(a)(5) applies to passengers arriving aboard commercial vessels traveling only between ports that are within the customs territory of the United States. The one-time only fee provision of section 58c(b)(4)(B) applies where a fee under section 58c(a)(5) is applicable to passengers arriving aboard a commercial vessel and the voyage is a single voyage involving two or more United States ports (in other words, the vessel proceeds coastwise to one or more United States ports after its initial arrival from a place outside the United States). This provision ensures that in the described situation, the applicable fee is charged only once for each passenger.

Finally, under section 58c(b)(1)(A)(i)(I)(dd), the term "adjacent islands" is given meaning by reference to the definition of that term found at 8 U.S.C. 1101(b)(5). The adjacent islands are set forth under § 24.22(g)(2)(i)(B) of the current Customs Regulations. The document

proposes to amend the regulation in order to bring it up to date with the language of 8 U.S.C. 1101(b)(5). (See proposed § 24.22(g)(1)(iii).) All islands found in the current regulation are covered in the proposed regulation (although not explicitly in every case).

Proposed Changes Regarding Administrative Practices

Section 24.22(b)(3) of the Customs Regulations concerns the procedure for prepayment of the fee for the arrival of commercial vessels (that is, vessels of 100 net tons or more as well as barges and other bulk carriers arriving from Canada or Mexico). Section 24.22(c)(3) concerns the procedure for prepayment of the fee for the arrival of commercial vehicles. Section 24.22(d) concerns the fee for the arrival of railroad cars and includes, in paragraph (d)(3), procedures for prepayment of the fee and, in paragraph (d)(4)(ii), procedures for monthly statement filing and fee remittance. In § 24.22(e), which concerns the fee for the arrival of private vessels and private aircraft, paragraph (e)(1) covers payment of the fee at the time of arrival and paragraph (e)(2) covers the procedure for prepayment of the fee. Section 22.24(g)(4) covers the procedure for payment of fees for the arrival of passengers aboard commercial vessels and commercial aircraft. Section 24.22(h) concerns the annual customs broker permit fee. Section 24.22(i) concerns procedures for remittance of, and for submitting information relative to, the fees provided for under § 24.22.

This document proposes to amend the above regulatory provisions to reflect current fee payment and other practices, including clarification of the proper addresses for the mailing of payments, requirements for the user fee decal, and use of electronic and credit card payment options.

Technical Correction

Upon routine review of the Part 24 texts, Customs discovered erroneous references to § 142.13(c) (19 CFR 142.13(c)) in paragraphs (a), (c)(2), and (d) of § 24.25, which pertains to statement processing and automated clearinghouse procedures. Section 142.13(c) is currently reserved, and the reference in the above paragraphs of § 24.25 should instead be to § 142.13(b), which pertains to special classes of merchandise.

This document proposes to correct these erroneous references.

Conforming Changes to Part 111

Part 111 of the Customs Regulations (19 CFR Part 111) pertains to customs brokers and includes, in §§ 111.19 and 111.96, references to the payment of the annual customs broker permit user fee referred to in § 24.22(h). This document proposes amendments to §§ 111.19 and 111.96 to conform to the change to § 24.22(h) referred to above and to clarify the payment procedure in connection with a national permit application.

COMMENTS

Before adopting these proposed amendments as a final rule, consideration will be given to any written comments timely submitted to Cus-

toms including comments on the clarity of the proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Based on the supplementary information set forth above and because the proposed amendments to the Customs Regulations concern collection of fees that are mandated by statute, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in § 24.22 have previously been approved by the Office of Management and Budget (OMB) under OMB control number 1515–0154 (User Fees). This notice of proposed rulemaking (NPRM) contains additional collections of information that have been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that lacks a valid control number.

The additional collections of information in these proposed regulations are at § 24.22(g)(5)(iv) and (v), pertaining to information required in the statement that must accompany a quarterly fee payment relative to passenger fees. This information is necessary to allow Customs to track and account for the two passenger fees mandated in the Miscellaneous Trade and Technical Corrections Act of 1999. The estimated burden to the public resulting from the additional collections is as follows:

Estimated total annual reporting and/or recordkeeping burden: 100 hrs.

Estimated average annual burden per respondent/recordkeeper: 4 hrs.

Estimated number of respondents and/or recordkeepers: 25.

Estimated annual frequency of responses: 4.

Comments on the additional collections of information should be sent to the OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C.

20503. A copy should also be sent to Customs at the address set forth in the "Address" section of this document.

Comments are invited on:

(a) Whether the additional collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the additional information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the additional information to be collected;

(d) Ways to minimize the additional information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide the additional information.

DRAFTING INFORMATION

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. Other personnel contributed in its development.

LIST OF SUBJECTS

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing.

PROPOSED AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, Parts 24 and 111 of the Customs Regulations (19 CFR Parts 24 and 111) are proposed to be amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * * * *

2. It is proposed to amend § 24.22 by:

a. Revising paragraphs (b)(3), (b)(4)(iv), and (c)(3);

b. In paragraph (d), revising the second sentence of paragraph (d)(3), adding a new sentence at the end of paragraph (d)(4)(ii), and, in the last sentence of paragraph (d)(5), removing the words ", in accordance with the procedures set forth in paragraph (i)(2) of this section";

c. Revising paragraphs (e)(1) and (e)(2);

d. In paragraph (g), revising paragraph (g)(1), redesignating paragraphs (g)(2) through (g)(7) as (g)(3) through (g)(8), adding new paragraph (g)(2), revising newly redesignated paragraphs (g)(3), (g)(4), and (g)(5), and, at the end of the last sentence of newly redesignated paragraph (g)(7), removing the words ", in accordance with the procedures set forth in paragraph (i)(2) of this section"; and

e. Revising paragraphs (h) and (i).

The revisions read as follows:

§ 24.22 Fees for certain services.

* * * * * * *

(b) * * *

(3) *Prepayment.* The vessel operator, owner, or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section, or any remaining portion of that amount if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment must be made at a Customs port office. When prepayment is for the remaining portion of a maximum calendar year amount, certified copies of receipts (Customs Form 368 or 368A) issued for individual arrival fee payments during the calendar year must accompany the payment.

(4) *Exceptions.* * * *

(iv) A ferry except for a ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(c) * * *

(3) *Prepayment.* The owner, agent, or person in charge of a commercial vehicle may at any time prepay a fee of $100 to cover all arrivals of that vehicle during a calendar year or any remaining portion of a calendar year. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: U.S. Customs Service, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the "Traveler Information" links at Customs website (http://www.customs.gov). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories. Once the prepayment has been made under this paragraph, a decal will be issued to be permanently affixed by adhesive to the lower left hand corner of the vehicle windshield or on the left wing window, and otherwise in accordance with the accompanying instructions, to show that the vehicle is exempt from payment of the fee for individual arrivals during the applicable calendar year or any remaining portion of that year.

(d) * * *

(3) *Prepayment.* * * * The prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i) of this section, shall be mailed to: U.S. Customs Service, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

(4) *Statement filing and payment procedures.* * * *

(ii) * * * Payment must be made in accordance with this paragraph and paragraph (i) of this section and must be sent by mail to the following address: U.S. Customs Service, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

* * * * * * *

(e) *Fee for arrival of a private vessel or private aircraft.*

(1) *Fee.* Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft must, upon first arrival in any calendar year, proceed to Customs and tender the sum of $25 to cover services provided in connection with all arrivals of that vessel or aircraft during that calendar year. A properly completed Customs Form 339, Annual User Fee Decal Request, must accompany the payment. Upon payment of the annual fee, a decal will be issued to be permanently affixed by adhesive to the vessel or aircraft, and otherwise in accordance with accompanying instructions, as evidence that the fee has been paid. Except in the case of private aircraft, and aircraft landing at user fee airports authorized under 19 U.S.C. 58b, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment.* A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the $25 annual fee specified in paragraph (e)(1) of this section. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, along with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: U.S. Customs Service, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the "Traveler Information" links at Customs website (http://www.customs.gov). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories.

* * * * * * *

(g) *Fees for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fees.* (i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this section, a fee of $5 must be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States, other than Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, in either of the following circumstances:

(A) When the journey of the arriving passenger originates in a place outside the United States other than Canada, Mexico, one of the territories or possessions of the United States, or one of the adjacent islands; or

(B) When the journey of the arriving passenger originates in the United States and is not limited to Canada, Mexico, territories and possessions of the United States, and adjacent islands.

(ii) Subject to paragraph (g)(3) of this section, a fee of $1.75 must be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel from Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, regardless of whether the journey of the arriving passenger originates in a place outside the United States or in the United States.

(iii) For purposes of this paragraph (g), the term "territories and possessions of the United States" includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and the term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(iv) For purposes of this paragraph (g), a journey, which may encompass multiple destinations and more than one mode of transportation, will be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States.

(v) For purposes of this paragraph (g), the term "passenger" means a natural person for whom transportation is provided and includes an infant whether a separate ticket or travel document is issued for the infant or the infant occupies a seat or is held or carried by another passenger.

(vi) For purposes of paragraph (g)(1)(ii) of this section, the term "commercial vessel" includes any ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(vii) In the case of a commercial vessel making a single voyage involving two or more United States ports, the applicable fee prescribed under paragraph (g)(1)(i) or (g)(1)(ii) of this section is required to be charged only one time for each passenger.

(2) *Fee chart*. The chart set forth below outlines the application of the fees specified in paragraphs (g)(1)(i) and (ii) of this section with reference to the place where the passenger's journey originates and with reference to the place from which the passenger arrives in the United States (that is, the last stop on the journey prior to arrival in the United States). In the chart:

(i) SL stands for "Specified Location" and means Canada, Mexico, any territories and possessions of the United States, and any adjacent islands;

(ii) The single asterisk (*) means that the journey originating in the United States is limited to travel to one or more Specified Locations;

(iii) The double asterisk (**) means that the journey originating in the United States includes travel to at least one place other than a Specified Location; and

(iv) N/A indicates that the facts presented in the chart preclude application of the fee.

Place Where Journey Originates (see (g)(1)(iv)):	Fee Status for Arrival From SL:		Fee Status for Arrival From Other Than SL:	
	Vessel	Aircraft	Vessel	Aircraft
SL	$1.75	No fee	No fee	No fee
Other than SL or U.S.	$1.75	No fee	$5	$5
U.S.*	$1.75	No fee	N/A	N/A
U.S.**	$1.75	No fee	$5	$5

(3) *Exceptions*. The fees specified in paragraph (g)(1) of this section will not apply to the following categories of arriving passengers:

(i) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided that the crew member or other person is traveling for an official business purpose and not for pleasure;

(ii) Diplomats and other persons in possession of a visa issued by the United States Department of State in class A–1, A–2, C–2, C–3, G–1 through G–4, or NATO 1–6;

(iii) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/Customs Military Inspection Program;

(iv) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport;

(v) Persons who are in transit to a destination outside the United States and for whom Customs inspectional services are not provided;

(vi) Persons departing from and returning to the same United States port as passengers on board the same vessel without having touched a foreign port or place; and

(vii) Persons arriving as passengers on board a commercial vessel traveling only between ports that are within the customs territory of the United States.

(4) *Fee collection procedures.* (i) Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the applicable fee specified in paragraph (g)(1) of this section, including the fee applicable to any infant traveling without a separate ticket or travel document. The fee must be separately identified with a notation "Federal inspection fees" on the ticket or travel document issued to the passenger to indicate that the required fee has been collected. A fee relative to an infant traveling without a ticket or travel document may be identified instead with the notation on a receipt or other document issued for that purpose or to record the infant's travel. If the ticket or travel document, or a receipt or other document issued relative to an infant traveling without a ticket or travel document, is not so marked and was issued in a foreign country, the fee must be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at the time of departure from the United States, the carrier making the collection must issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents must collect the fee in the same manner as a carrier.

(ii) Collection of the fee under paragraph (g)(1)(i) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States which originates in and arrives from a place outside the United States other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, and the return arrival in the United States is from a place other than one of these specified places; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, is pro-

cessed by Customs, and the journey does not originate in one of these specified places.

(iii) Collection of the fee under paragraph (g)(1)(ii) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States and the return arrival in the United States is from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island and is processed by Customs.

(5) *Quarterly payment and statement procedures.* Payment to Customs of the fees required to be collected under paragraph (g)(1) of this section must be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees must be made, in accordance with the procedures set forth in this paragraph and paragraph (i) of this section, by the party required to collect the fee under paragraph (g)(4)(1) of this section. Each quarterly fee payment must be sent to the following address: U.S. Customs Service, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278). Overpayments and underpayments may be accounted for by an explanation with, and adjustment of, the next due quarterly payment to Customs. The quarterly payment must be accompanied by a statement that includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer identification number of the party remitting payment;

(iii) The calendar quarter covered by the payment;

(iv) The total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, and the total amount of fees collected and remitted; and

(v) For commercial vessel passengers, the total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were re-

quired to be collected, the total amount of fees collected and remitted to Customs, and a separate breakdown of the foregoing information relative to the $5 vessel passenger fee collected and remitted under paragraph (g)(1)(i) of this section and the $1.75 vessel passenger fee collected and remitted under paragraph (g)(1)(ii) of this section.

* * * * * * *

(h) *Annual customs broker permit fee.* Customs brokers are subject to an annual fee for each district permit and for a national permit held by an individual, partnership, association, or corporation, as provided in § 111.96(c) of this chapter. The annual fee for each district permit must be submitted to the port through which the broker was granted the permit. The annual fee for a national permit must be submitted to the port through which the broker's license is delivered.

(i) *Information submission and fee remittance procedures.* In addition to any information specified elsewhere in this section, each payment made by mail must be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies. All fee payments required under this section must be in the amounts prescribed and must be made in U.S. currency, or by check or money order payable to the United States Customs Service, in accordance with the provisions of § 24.1 of this part. Authorization for making payments electronically can be obtained by writing to the National Finance Center, Collections Section, 6026 Lakeside Blvd., Indianapolis, IN 46278. Where payment is made at a Customs port, credit cards will be accepted only where the port is equipped to accept credit cards for the type of payment being made. If payment is made by check or money order, the check or money order must be annotated with the appropriate class code. The applicable class codes and payment locations for each fee are as follows:

(1) Fee under paragraph (b)(1) of this section (commercial vessels of 100 net tons or more other than barges and other bulk carriers from Canada or Mexico): class code 491. Payment location: port of arrival for each individual arrival (fee to be collected by Customs at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(2) Fee under paragraph (b)(2) of this section (barges and other bulk carriers from Canada or Mexico): class code 498. Payment location: port of arrival for each individual arrival (fee to be collected by Customs at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(3) Fee under paragraph (c) of this section (commercial vehicles): for each individual arrival, class code 492; for prepayment of the maximum calendar year fee, class code 902. Payment location: port of arrival for each individual arrival (fee to be collected by Customs at the time of arrival) or prepayment in accordance with paragraph (c)(3) of this section;

(4) Fee under paragraph (d) of this section (railroad cars): for each individual arrival (under the monthly payment and statement filing procedure), class code 493; for prepayment of the maximum calendar year fee, class code 903. Payment location: for individual arrivals (monthly payment and statement filing), see paragraph (d)(4)(ii) of this section; for prepayment, see paragraph (d)(3) of this section;

(5) Fee under paragraph (e) of this section (private vessels and aircraft): for private vessels, class code 904; for private aircraft, class code 494. Payment location: port of arrival for each individual arrival (fee to be collected by Customs at the time of arrival) or prepayment in accordance with paragraph (e)(2) of this section;

(6) Fee under paragraph (f) of this section (dutiable mail): class code 496. Payment location: see paragraph (f) of this section;

(7) Fee under paragraph (g)(1)(i) of this section (the $5 fee for commercial vessel and commercial aircraft passengers): class code 495. Payment location: see paragraph (g)(5) of this section;

(8) Fee under paragraph (g)(1)(ii) of this section (the $1.75 fee for commercial vessel passengers): class code 484. Payment location: see paragraph (g)(5) of this section; and

(9) Fee under paragraph (h) of this section (customs broker permits): for district permits, class code 497; for national permits, class code 997. Payment location: see paragraph (h) of this section.

* * * * * * *

3. It is proposed to amend § 24.25 in paragraphs (a), (c)(2), and (d) by removing the reference "§ 142.13(c)" wherever it appears and adding, in its place, the reference "§ 142.13(b)".

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * * * *

Section 111.96 also issued under 19 U.S.C. 58c; 31 U.S.C. 9701.

2. It is proposed to amend § 111.19 by revising paragraphs (c) and (f)(4) to read as follows:

§ 111.19 Permits

* * * * * * *

(c) *Fees.* Each application for a district permit under paragraph (b) of this section must be accompanied by the $100 and $125 fees specified in §§ 111.96(b) and (c). In the case of an application for a national permit under paragraph (f) of this section, the $100 fee specified in § 111.96(b) and the $125 fee specified in § 111.96(c) must be paid at the port through which the applicant's license was delivered (see § 111.15) prior to submission of the application. The $125 fee specified in § 111.96(c) also must be paid in connection with the issuance of an initial district permit

concurrently with the issuance of a license under paragraph (a) of this section.

* * * * * * *

(f) *National permit.* * * *

(4) Attach a receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid in accordance with paragraph (c) of this section.

* * * * * * *

3. It is proposed to amend § 111.96 by revising paragraph (b); and in paragraph c, by removing from the second sentence the words "or upon filing the application for the" and adding in their place the words "or in connection with the filing of an application for a"; and by removing from the same sentence the reference "§ 111.19(f)(4)" and adding in its place "§ 111.19(c)". The revision reads as follows:

§ 111.96 Fees.

* * * * * * *

(b) *Permit fee.* A fee of $100 must be paid in connection with each permit application under § 111.19 to defray the costs of processing the application, including an application for reinstatement of a permit that was revoked by operation of law or otherwise.

* * * * * * *

CHARLES W. WINWOOD,
Acting Commissioner of Customs.

Approved: March 13, 2002.
TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 18, 2002 (67 FR 11954)]

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

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Donald C. Pogue
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Decisions of the United States Court of International Trade

(Slip Op. 02–28)

HELI-SUPPORT, INC. AND AEROTEC, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 99–10–00636

[Motion for summary judgment upholding Customs' tariff classification granted.]

(Dated March 13, 2002)

Peter Herrick, Esq. for plaintiffs Heli-Support, Inc. and Aerotec, Inc.

Robert D. McCallum, Jr., Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, *Barbara M. Epstein*, Civil Division, United States Department of Justice, Commercial Litigation Branch, *Chi Choy, Esq.*, Office of Assistant Chief Counsel, International Trade Litigation, United States Customs Service, for defendant.

OPINION

RESTANI, *Judge:* This customs classification action is before the court on Defendant's motion for summary judgment. USCIT Rule 56. Defendant, the United States, moves for summary judgment against plaintiffs, Heli-Support, Inc. and Aerotec, Inc. (collectively "Heli-Support"), on the grounds that the United States Customs Service ("Customs") properly classified Heli-Support's merchandise upon entry from Sweden in 1997.

JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1581(a) to hear appeals from denials of classification protests. *Werner & Pfleiderer Corp. v. United States*, 17 CIT 916, 917 (1993).

BACKGROUND

Heli-Support imported the product in question, the Saab TopEye AE and Ground Reference System ("TopEye"), into the United States from

Sweden in 1997.[1] The TopEye is a high precision system used for measuring topography. *See Technical Description,* Saab TopEye, *available at* http://www.combitech.se/survey/topeye/index.html (last visited March 13, 2002) (hereinafter "Technical Description"). The TopEye uses a specialized laser camera that is mounted to the undercarriage of any standard helicopter or fixed wing aircraft to generate topographical images. *See id.* at 1. The TopEye is attached to a helicopter or aircraft so that it may photograph various landscapes from above and, from those pictures, produce maps. *Id.* at 4.

The images are produced by emitting a laser pulse, which is then directed by a set of mirrors to reflect off of a given object. *Id.* at 5. That reflection, in turn, is captured by a light collector; the time required for the light to travel from the laser, to the object, and back to the collector is measured and divided by the speed of light to calculate distances. *See* Defendant's Statement of Material Facts Not in Issue, No. 11. Simultaneously, the TopEye uses two video cameras to record overhead images, as well as images contained in a field of view larger than the laser scanning width. *Technical Description* at 4. These cameras are aligned with the laser scanner to allow synchronization with the captured terrain data. *Id.* The combination of the laser-generated and video images can be used to create highly detailed, large-scale maps in near real time. *See id.* The parties do not dispute the essential components and functions of the TopEye.[2]

Upon import, Customs classified the TopEye as a "surveying instrument" under subheading 9015.80.20 of the Harmonized Tariff Schedule of the United States (1997) ("HTSUS") and, accordingly, imposed a 3.9% *ad valorem* duty. Heli-Support claims that the TopEye should have been classified as a "measuring or checking instrument" under HTSUS 9031.80.00, and as such, should have entered the United States duty-free.

STANDARD OF REVIEW

The court shall grant Defendant's motion for summary judgment if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* USCIT Rule 56(d). The relevant facts are not in dispute. The only issue is the scope of the HTSUS provisions with respect to this product, which may be determined as a matter of law. *See E.M. Chem. v. United States,* 920 F.2d 910, 912 (Fed. Cir. 1990).

DISCUSSION

Under Rule 1 of the General Rules of the Interpretation ("GRI") of the Harmonized Tariff Schedule, "a court first construes the language

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[1] Heli-Support is the importer of record in this case, while Aerotec is the ultimate consignee of the product in question. Both plaintiffs will be referred to collectively as "Heli-Support" in this opinion.

[2] Plaintiff agrees that the TopEye is composed of optical elements used to create topographical images. *See* Pl.'s Statement of Material Facts, at 1–2. Plaintiff, therefore, does not dispute the basic functions or components of the TopEye itself. Instead, Plaintiff disputes the scope of "surveying devices" under the HTSUS. Plaintiff argues that, even though the TopEye uses cameras, mirrors, and lasers to create digital images, the TopEye is "not a survey instrument to be used in the practice of the science of surveying" by "surveyors." *See id.* at ¶¶ 18, 20. Plaintiff's argument is, therefore, a legal one and properly decided on summary judgment.

of the heading, and any section or chapter notes in question, to determine whether the product at issue is classifiable under the heading. Only after determining that a product is classifiable under the heading should the court look to the subheadings to find the correct classification for the merchandise." *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1440 (Fed. Cir. 1998). In reviewing Customs' classification here, the court must first determine whether the TopEye can generally be classified as a "surveying device" under heading 9015. In doing so, the court looks to whether the TopEye is, as Plaintiff suggests, more appropriately classified under heading 9031 as a "measuring or checking instrument."[3]

Heading 9031 states that it may be invoked only when the item in question is not specified elsewhere in chapter 90.[4] Therefore, if the court determines that the TopEye is properly classified under heading 9015 as a surveying device, the TopEye cannot be classified under heading 9031 as a checking instrument. If the court finds that the TopEye is classifiable as a surveying device, the court must then determine whether it should be classified under the "optical instrument" subheading. *See* HTSUS 9015.80.20.[5] The primary inquiry, therefore, is whether Customs properly classified the TopEye as a surveying device.

A. Surveying Device

Surveying devices are broadly defined to include instruments of modern technology that carry out special types of surveying, beyond mere surface examinations. *See Gehrig, Hoban & Co., Inc., v. United States*, 293 F. Supp. 433, 439 (Cust. Ct. 1968); *see also Schlumberger Well Surveying Corp. v. United States*, 54 CCPA 37, 41 (1967) (holding that cartridges designed to determine the dip of subsurface formations for oil exploration are surveying devices); *R.W. Smith v. United States*, 41 Cust. Ct. 78, 81–82 (1958) (holding that deviation recorders and parts used to measure the angle and the direction from the vertical of an oil well hole are surveying devices).

These cases have adopted broad lexicographic definitions of the word "survey" and "surveying instrument." For example, the court in *R.W. Smith* referred to the definition of "surveying" in *Columbia Encyclopedia* (2d ed. 1950), stating:

> surveying, the science of finding the relative position on or near the earth's surface. Boundaries, areas, elevations, construction lines,

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[3] Heli-Support withdrew its initial argument that the TopEye should have been classified under HTSUS 8803.30.00 as a "helicopter part." *See* Plaintiff's Response Brief at 2. The court notes that this claim would have failed pursuant to note 2(g) of HTSUS § XVII, because that note excludes "parts and accessories" of Chapter 90 from classification under § XVII and, therefore, under Chapter 88 by incorporation.

[4] HTSUS 9031.80.00 reads as follows:

9031	Measuring or checking instruments, appliances and machines, *not specified or included elsewhere in this chapter* * * *

Id. (emphasis added)

[5] HTSUS 9015.80.20 provides:

9015	Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders, parts and accessories thereof:
9015.80	Other instruments and appliances:
9015.80.20	Optical instruments and appliances * * *

> and geographical or artificial features are determined by the measurement of horizontal and vertical distances and angles and by computations based in part on the principles of geometry and trigonometry. * * * Branches of surveying are named according to the purpose of surveys, e.g., topographic surveying, used to determine relief (see CONTOUR), route surveying, mine surveying, construction surveying, or according to the method used, e.g. transit surveying, plane-table surveying, photogrammetic surveying (securing data by photographs). Surveys based on photographs are especially useful in rugged or inaccessible country and for reconnaissance surveys for construction, mapping, or military purposes.

R.W. Smith at 1921.

R.W. Smith also referred to the definition of "surveying" in the *Encyclopedia Americana*, Volume 26 (1953):

> SURVEYING, the science of determining the positions of points on the earth's surface for the purpose of making therefrom a graphic representation of the area. By the term earth's surface is meant all of the earth that can be explored-the bottoms of seas and rivers, and the interior of mines, as well as the more accessible portions. It includes the measurement of distances and angles and the determination of elevations.

R.W. Smith at 91.

In addition, *Webster's Third New International Dictionary of the English Language* (1981) defines "survey" as follows:

> 1. Survey: 1a: to look over or examine with reference to condition, situation, or value: examine and ascertain the state of: Appraise, Estimate, Evaluate * * * 2: to determine and delineate the form, extent, and position of (as a tract of land, a coast, or a harbor) by taking linear and angular measurements and by applying the principles of geometry and trigonometry 3a: to view from or as if from a high place or a commanding position: take an inclusive or overall view of; consider or study comprehensively: examine the whole extent
>
> 2. Survey: * * * 3a: the process of surveying an area of land or water: the operation of finding and delineating the contour, dimensions, and position of any part of the earth's surface whether land or water (a topographic and hydrographic, of a locality) b: a measured plan, a description of a portion of an area or of a road or line through an area obtained by surveying * * *

Heli-Support ignores these definitions and argues that the TopEye is not a surveying instrument because it is not an instrument used in the practice and science of surveying by a surveyor. The court notes, however, that TopEye's own marketing literature describes it as a surveying device, as does the technical description of the product on the SAAB website.

There is no question that the primary function of the TopEye is to record topographical images. The TopEye would, under any of the above definitions, be considered a surveying device. "[A]bsent contrary legis-

lative intent, HTSUS terms are to be construed according to their common and commercial meanings, which are presumed to be the same." *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999). Upon review of the its components and functions, the court finds that the TopEye is properly classified as a surveying device.

Plaintiff argues that the TopEye is more appropriately classified as a checking or measuring instrument under heading 9031. GRI Rule 3(a) states that if goods are classifiable under two or more headings, classification must be effected under the provision with the most specific description.[6] The court has already determined that the TopEye is classifiable as a surveying device. *See* discussion *supra*. Because heading 9031, by its own prohibition, cannot apply to items otherwise classified under the same chapter, the court need not determine which heading is more specific.

The court notes, however, that heading 9015, which reads "surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof" is, on its face, more specific than heading 9031, which reads: "measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof." In analyzing specificity, the court may only compare "the language of the headings and not the language of the subheadings." *Orlando Food Corp.*, at 1440. Under the "rule of relative specificity," the court would look "to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty." *Orlando Food Corp.*, at 1441. To the extent necessary, the court finds that the description and requirements of heading 9015 are more specific than those of heading 9031. Finding that the TopEye is classifiable as a surveying device, the court turns to whether it should be classified under the optical instrument subheading.

B. Optical Instrument

In determining whether the TopEye is an optical instrument under HTSUS 9015.80.20, the court must determine: 1) whether the device acts on or interacts with light; 2) whether the device permits or enhances human vision through the use of one or more optical elements; and 3) whether the device uses the optical properties of the device in something more than a "subsidiary" capacity. *See United States v. Ataka Am., Inc.*, 64 CCPA 60, 66, 550 F.2d 33, 37 (1977); *see also Celestaire, Inc. v. United States*, 120 F.3d 1232, 1233 (Fed. Cir. 1997).

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[6] Harmonized Tariff Schedule General Rules of Interpretation:

Classification of goods in the schedule shall be governed by the following principles:

3. When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to heading providing a more general description * * *

There is no question that the TopEye "acts on or interacts with light," in that it projects a laser—a light beam—onto land in order to measure distances. The TopEye "enhances human vision" because the device employs cameras and mirrors to produce images that the human eye would not otherwise be able to detect with any sort of accuracy or speed.[7] Heli-Support focuses its objection on the third requirement, arguing that the TopEye's cameras and mirrors are merely subsidiary optical elements and, consequently, do not use light in the way the term "optics" is used in the tariff schedule. This argument ignores the integral nature of those components in producing TopEye's imagery. The core purpose of the TopEye is to create images through the use of specialized optical technology. Accordingly, the TopEye satisfies this "optical element" portion of the "surveying device" test.

CONCLUSION

The TopEye meets the HTSUS 9015.80.20 requirement of being both a surveying device and an optical instrument. The court finds that Customs correctly classified the TopEye under that provision and, therefore, summary judgment must be entered in favor of the United States.

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[7] Mirrors have been held to be "optical elements". *See, e.g., Celestaire*, 120 F.3d at 1233 (qualifying a "split-image mirror" as an "optical element"); *Engis Equip. Co. v. United States*, 62 Cust. Ct. 29, 294 F. Supp. 964, 967 (1969) (considering a mirror an optical element in an autocollimator).

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C02/29 3/7/02 Wallach,	EM Indus., Inc.	00–08–00402	8480.71.40 2.6%	8413.81.00 1.2%	Agreed statement of facts	Oakland Various modules and components of a chemical supply system
C02/30 3/12/02 Tsoucalas, J.	Cymbolic Sciences, Ltd.	94–10–00620	CA9017.20.80 At the NAFTA duty rate of 2.9% or 2.3%	9006.10.00 3% or at the NAFTA rate of 1.5% or 1.2% 9006.59.40 4% or at the NAFTA rate of 2% or 1.6%	Agreed statement of facts	Blaine Photo-plotters
C02/31 3/12/02 Tsoucalas, J.	Cymbolic Sciences, Ltd.	94–10–00621	CA9017.20.80 At the NAFTA duty rate of 2.9% or 2.3%	9006.10.00 3% or at the NAFTA rate of 1.5% or 1.2% 9006.59.40 4% or at the NAFTA rate of 2% or 1.6%	Agreed statement of facts	Blaine Photo-plotters

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